

826

8269

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,  
12:01 a.m., the Financing Agreement described below has  
been assigned to the Consolidated Rail Corporation by the

Trustees of: Reading Company  
1 Plymouth Meeting  
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease

, dated September 2, 1975 ,

bearing the ICC recordation number 8127

The payee's name and address is: Greyhound Equipment Leasing Corp.  
C/O Chemical Bank, Trustee  
20 Pine Street  
New York, NY 10015  
Attn: Corporate Trustee Administration

This Notice of Assignment has been placed in the  
file of the ICC recordation number listed above and the entire  
assignment is contained in the ICC recordation file stamped  
in the margin of this assignment. A copy hereof will be  
promptly mailed to the payee listed above for distribution  
to the beneficial holder(s) of the Financing Agreement described  
in this Notice of Assignment.

Consolidated Rail Corporation

8127  
RECORDATION NO. .... Filed & Recorded

NOV 25 1975 -9 10 AM

INTERSTATE COMMERCE COMMISSION

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## **Lease of Railroad Equipment**

*Dated as of September 2, 1975*

between

**JOSEPH L. CASTLE**

and

**ANDREW L. LEWIS, JR.,**

*Trustees of the Property of Reading Company*

and

**GREYHOUND EQUIPMENT LEASING CORPORATION**

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*Rec No 8127  
(recorded 11/25/75)*

**LEASE OF RAILROAD EQUIPMENT** dated as of September 2, 1975, between JOSEPH L. CASTLE and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company (hereinafter called the Railroad) as such Trustees and not individually (such Trustees, together with their successors and assigns, being hereinafter called the Railroad Trustees or, collectively, the Lessee) and GREYHOUND EQUIPMENT LEASING CORPORATION, a Delaware corporation (hereinafter called the Lessor).

WHEREAS, on the 23rd day of November, 1971, the Railroad filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings), and the Railroad Trustees were duly appointed Trustees of the property of the Railroad by an order of said Court in the Reorganization Proceedings, and said appointment has been duly ratified by an order of the Interstate Commerce Commission, and said Trustees have been duly qualified as such and are duly vested with title to and are in possession of and operating the property of the Railroad pursuant to the provisions and directions contained in orders of said Court;

WHEREAS, the Lessor is entering into a manufacturing agreement dated as of the date hereof with Bethlehem Steel Corporation, a Delaware corporation (such corporation being hereinafter called the Manufacturer and such agreement as in effect from time to time being hereinafter called the Manufacturing Agreement), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto, or such lesser aggregate number of units as shall have an aggregate purchase price not in excess of \$42,000,000 (hereinafter called a Unit or the Units);

WHEREAS, the Lessor is assigning certain of its interests in the Manufacturing Agreement to Chemical Bank, a New York corporation (said bank, acting as trustee under the Equipment Note Agreement, being hereinafter together with its successors and assigns called the Trustee), pursuant to an Equipment Note Agreement dated as of the

date hereof (said agreement as in effect from time to time being hereinafter called the Equipment Note Agreement) by and among the Trustee, the Lessor and the Lessor's parent, Greyhound Leasing & Financial Corporation, and the Manufacturer is consenting thereto pursuant to a Consent and Agreement dated as of the date hereof;

WHEREAS, the Lessee desires to lease all the Units, or such lesser number as are delivered, accepted and settled for under the Manufacturing Agreement on or prior to June 30, 1976;

WHEREAS, the Lessor is assigning its interest in this Lease and in the Units subject hereto to the Trustee pursuant to the Equipment Note Agreement to secure Equipment Notes (the Equipment Notes) to be issued thereunder to evidence loans made by the lenders (the Lenders) which are parties to a certain Loan and Financing Agreement dated as of the date hereof (said agreement as in effect from time to time being hereinafter called the Loan and Financing Agreement) and the Lessee is consenting thereto pursuant to the Lessee's Consent and Agreement dated as of the date hereof (hereinafter called the Consent);

WHEREAS, by an order of the Court in the Reorganization Proceedings dated October 24, 1975, the form and terms of this Lease were approved by said Court in substantially the present form hereof, and the Lessee was also duly authorized to execute and deliver this Lease, and otherwise to make and carry out the covenants and agreements on its part herein contained; and

WHEREAS, the Lessee represents that all acts and things necessary to make this Lease valid and binding upon the Lessee have been done and performed;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Manufacturer, the Trustee or the holders of the Equipment Notes of the Lessor issued under the Equipment Note Agreement; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units after acceptance of such Units from whatsoever cause, any liens, encumbrances, except any created by the Lessor or otherwise provided for herein, or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, recoupment or defense, and without abatement, suspension, deferment, diminution or proration by reason of any circumstance or occurrence whatsoever. Except as expressly provided hereunder, the Lessee waives all rights now or hereafter conferred by statute or otherwise to terminate or surrender this Lease or the Units or any part

thereof or to any abatement, suspension, deferment, diminution, reduction or proration of the rentals and other sums payable hereunder on account of any occurrence described in this Lease.

§2. *Delivery and Acceptance of Units.* (a) The Lessor will complete delivery of the Units on or prior to June 30, 1976 (the date on which such deliveries are completed and all Units have been delivered and accepted hereunder being called the Final Delivery Date), it being understood that delivery of the Units hereunder will not be made until this Lease has been recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act pursuant to §16 hereof. Each Unit delivered pursuant to this §2(a) shall be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Manufacturing Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of inspection and acceptance (herein called a Certificate of Inspection and Acceptance), stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Inspection and Acceptance and is marked in accordance with paragraph 1 of the Manufacturing Agreement, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

(b) The Lessor shall not be required to lease to the Lessee and the Lessee shall not be required to lease from the Lessor Units not delivered to, and accepted by, the Lessee hereunder on or before June 30, 1976.

(c) The Lessee shall promptly after the execution of this Lease deliver to the Lessor a certificate signed by an authorized representative of the Lessee setting forth the names and the signatures of the persons authorized to execute and deliver Certificates of Inspection and Acceptance hereunder.

§3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit then subject to this Lease, in each case one business day

prior to the first day of each month during the term of this Lease (commencing with December 31, 1975), an amount equal to the following applicable percentage of the Purchase Price, as defined in the Manufacturing Agreement (the Purchase Price), of such Unit:

(a) on December 31, 1975, an amount equal to 0.9% as rental in arrears for each full monthly rental period during which said Unit has been subject to this Lease, plus an amount equal to 0.03% per day as rental in arrears from and including the delivery date thereof through and including the last day of the month during which said Unit was delivered;

(b) if the Final Delivery Date does not occur on or prior to December 31, 1975, on the last business day of each month thereafter and through and including the earlier to occur of (i) the last business day of the month in which the Final Delivery Date occurs or (ii) June 30, 1976, an amount equal to 0.9% as rental in arrears for the monthly rental period ending on the last day of said month (or, if said Unit was delivered in said month, an amount equal to 0.03% per day as such rental from and including the delivery date of such Unit through and including the last day of said month); and

(c) on the earlier to occur of (i) the last business day of the month in which the Final Delivery Date occurs or (ii) June 30, 1976 (but in any event not earlier than December 31, 1975) and on the last business day of each month thereafter, an amount equal to 0.99044% as rental in advance for the next succeeding monthly rental period of the term of this Lease.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease for the account of the Lessor in care of the Trustee, at 20 Pine Street, New York, New York 10015, Attention: Corporate Trustee Administration, on or before 11:00 a.m., New York City time, on the date upon which such payments are due and payable; provided, however, that from and after the payment in full of principal of and interest on all the Equipment Notes and all sums owing to the Trustee under the Equipment Note Agreement, the payments provided for in this Lease shall be made to the Lessor at the latest address specified for the purpose in a writing furnished by the Lessor to the Lessee. Such payments made in care of the Trustee shall be accompanied by instructions to the Trustee, first, to apply such payments to satisfy the obligations of the Lessor under



the Equipment Note Agreement, and the Equipment Notes due and payable on the next succeeding Installment Date (as defined in the Equipment Note Agreement) and, second, so long as no Event of Default or event which with the giving of notice or lapse of time or both, as provided in the Equipment Note Agreement, would constitute an Event of Default under the Equipment Note Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this §3 in funds immediately available in New York City.

The obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, payable on a parity with other equipment obligations theretofore or thereafter assumed or incurred by the Lessee, except the obligation of the Railroad Trustees under an agreement dated as of October 1, 1973 with the United States of America with respect to 57 diesel locomotives; and, upon occurrence of an Event of Default under this Lease, any claim for damages will constitute an expense of administration.

§4. *Term of Lease.* (a) The term of this Lease as to each Unit shall begin on the date of delivery of such Unit and acceptance thereof hereunder.

(b) The term of this Lease as to each Unit shall (subject to earlier terminations in accordance with the express provisions hereof) expire on a date which shall be the last day of the 180th calendar month after the end of the Initial Period with respect to such Unit. As used in the foregoing sentence, and elsewhere herein, the Initial Period for any Unit shall mean and include that portion of the term of this Lease with respect to such Unit from the commencement thereof as to such Unit (as provided in the foregoing §4(a) ) through and including the earlier of (i) the last day of the month in which the Final Delivery Date occurs (or December 31, 1975 if the Final Delivery Date occurs prior to January 1, 1976), or (ii) June 30, 1976.

(c) Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessor under this Lease and in and to the

Units are subject to the rights of the Trustee and the holders of the Equipment Notes under the Equipment Note Agreement. If an Event of Default should occur under the Equipment Note Agreement, the Trustee may exercise any of the remedies provided for therein, and/or terminate this Lease (or rescind its termination), all as provided herein and therein.

§5. *Identification Marks.* Upon or before the delivery to the Lessee of each of the Units, the Manufacturer shall have caused to be plainly, distinctly, permanently and conspicuously marked upon each side of such Unit the following words in letters not less than one inch in height:

GREYHOUND EQUIPMENT LEASING CORPORATION, OWNER AND LESSOR,  
CHEMICAL BANK, TRUSTEE, ASSIGNEE

In case, during the continuance of this Lease, any such marking shall at any time be painted over or otherwise made inconspicuous, removed, defaced or destroyed on any Unit, the Lessee shall immediately cause the same to be restored or replaced. The Lessee will not allow the name of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor or its assignee; but the Units may be lettered with the names or initials or other insignia customarily used by the Lessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Units under this Lease.

On or prior to the time of delivery of each Unit to the Lessee, the Manufacturer shall have caused to be placed on each side of such Unit the Road Number of such Unit. At all times during the continuance of this Lease, the Lessee will cause each Unit to bear the number so assigned to it, and the Lessee will not change or permit to be changed, the numbers of any such Units, except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee and the Lessor by the Lessee and filed, re-

corded or deposited in all public offices where this Lease or the Equipment Note Agreement will have been filed, recorded or deposited and the Lessee shall have furnished to the Lessor and the Trustee an opinion of counsel with respect to such filings, recordings or deposits of such statement to the effect set forth in §15(ii) or (if applicable) §22(a)(iv)(c) hereof.

§6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the State of Arizona and City of Phoenix without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, of the Equipment Note Agreement or of the Manufacturing Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of the ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor to or the interest of the Trustee in such Unit, or result in a lien upon any such Unit: *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor or the Trustee, adversely

affect the title, property or rights of the Lessor hereunder or the Trustee or the holders of the Equipment Notes under the Equipment Note Agreement. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly, the Lessor shall not pay such impositions without notification to the Lessee, giving the Lessee a right to contest, in good faith and at the Lessee's sole expense, such impositions on behalf of the Lessor, but if thereafter the Lessor shall pay such impositions, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer, the Trustee or the holders of the Equipment Notes or otherwise pursuant to any correlative provision of the Manufacturing Agreement or the Equipment Note Agreement, not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event that, during the continuance of this Lease, any reports with respect to impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor, the Trustee and the holders of the Equipment Notes in such Units or notify the Lessor and the Trustee of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Trustee.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §6, such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such impositions are paid or reimbursed by the Lessee, except as provided in §22 hereof.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this §6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; *provided*,

*however*, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this §6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of use by the Lessee for a period of 180 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Trustee with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor, in addition to the installment of rent then otherwise due and payable, an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Manufacturer of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such

Unit, and shall pay any excess to the Lessor. The Lessee itself may be a purchaser hereunder of the Unit or Units at its or their Fair Market Value as of the date of the Casualty Occurrence as determined under §13 hereof and may treat such Casualty Value paid to the Lessor as an installment on such purchase price. Assignment or transfer under §22 shall not constitute a Casualty Occurrence as herein defined.

Subject to adjustment pursuant to the provisions of §17 hereof, the Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment:

Rental Payment Number	Percentage of Purchase Price	Rental Payment Number	Percentage of Purchase Price
Initial Period*	103.000%	17	101.865
Regular Payments		18	101.781
1	102.920	19	101.697
2	102.880	20	101.603
3	102.841	21	101.510
4	102.802	22	101.417
5	102.753	23	101.388
6	102.705	24	101.359
7	102.657	25	101.331
8	102.600	26	101.219
9	102.543	27	101.107
10	102.486	28	100.994
11	102.381	29	100.873
12	102.277	30	100.752
13	102.173	31	100.632
14	102.099	32	100.443
15	102.025	33	100.254
16	101.949	34	100.065

\* During the Initial Period for any Unit, the percentage shown above shall apply and be payable on the monthly rental payment date next succeeding the giving of notice of the Casualty Occurrence; provided however, that the Casualty Value of any Unit as to which a notice of a Casualty Occurrence has been given during the month next preceding the making of the first regular rental payment shall be an amount equal to that percentage of the Purchase Price thereof set forth opposite "1" above.

<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>
35	99.963	71	79.827
36	99.861	72	79.741
37	99.970	73	79.655
38	99.819	74	79.362
39	99.668	75	79.069
40	99.517	76	78.776
41	99.356	77	78.485
42	99.195	78	78.194
43	99.034	79	77.902
44	98.862	80	77.560
45	98.691	81	77.218
46	98.520	82	76.875
47	98.259	83	76.734
48	98.098	84	76.593
49	97.937	85	76.452
50	97.776	86	76.311
51	97.615	87	76.170
52	97.454	88	76.029
53	97.293	89	75.888
54	97.132	90	75.747
55	96.971	91	75.606
56	96.810	92	75.465
57	96.649	93	75.324
58	96.488	94	75.183
59	96.327	95	75.042
60	96.166	96	74.901
61	96.005	97	74.760
62	95.844	98	74.619
63	95.683	99	74.478
64	95.522	100	74.337
65	95.361	101	74.196
66	95.200	102	74.055
67	95.039	103	73.914
68	94.878	104	73.773
69	94.717	105	73.632
70	94.556	106	73.491

<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>
107	63.656	143	43.422
108	63.158	144	42.787
109	62.656	145	42.147
110	62.151	146	41.503
111	61.643	147	40.855
112	61.131	148	40.202
113	60.616	149	39.545
114	60.097	150	38.884
115	59.575	151	38.218
116	59.049	152	37.547
117	58.519	153	36.872
118	57.986	154	36.193
119	57.450	155	35.509
120	56.909	156	34.819
121	56.366	157	34.126
122	55.818	158	33.428
123	55.267	159	32.725
124	54.712	160	32.017
125	54.153	161	31.305
126	53.590	162	30.588
127	53.024	163	29.865
128	52.454	164	29.138
129	51.879	165	28.406
130	51.302	166	27.669
131	50.720	167	26.927
132	50.134	168	26.180
133	49.544	169	25.428
134	48.950	170	24.631
135	48.353	171	23.909
136	47.751	172	23.142
137	47.145	173	22.369
138	46.535	174	21.591
139	45.921	175	20.808
140	45.302	176	19.520
141	44.680	177	18.726
142	44.053	178	17.927



<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Number</u>	<u>Percentage of Purchase Price</u>
179	17.122	Thereafter	15.000
180	16.062		

Anything contained in this Lease or in the Manufacturing Agreement to the contrary notwithstanding, the Casualty Value for the Units as of any date of computation shall in no event be less than the unpaid principal amount of the Equipment Notes outstanding as of such date of computation plus interest accrued thereon to such date. The Casualty Value has been calculated on the premise that any and all rent due for the applicable period and any and all prior periods has been paid by the Lessee on or before the due date.

Whenever any Unit shall suffer a Casualty Occurrence after expiration of this Lease (but not early termination pursuant to §10 or 22 hereof) and before such Unit shall have been returned in the manner provided in §14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 15% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessee may purchase the Unit or Units as provided in the first paragraph of this Section.

Except as hereinabove in this §7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurers acceptable to the Lessor and the Trustee all-risk property insurance (including mysterious disappearance coverage) in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks insured against by the Lessee in respect

of similar equipment owned by it, and the benefits thereof shall be payable to the Trustee, the holders of the Equipment Notes, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Equipment Notes shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Said public liability insurance shall also, prior to June 30, 1976, insure the interest, if any, of the Manufacturer. Notwithstanding the foregoing, Lessee shall maintain such property insurance with respect to each Unit at the time subject hereto in an amount not less than the Casualty Value of such Unit from time to time (determined as of the preceding rental payment date for such Unit); *provided, however*, that such property insurance may be limited so that any loss amounting to less than \$1,000 per Unit or amounting to more than \$2,500,000 per occurrence, shall not be payable by the insurer, and coverage under public liability insurance may be limited so that any loss amounting to less than \$100,000 per occurrence shall not be payable by the insurer. Such insurance policies shall provide that they may be altered or cancelled by the insurer only after 30 days' written notice by the insurer to the Lessor and the Trustee and shall (except in the case of public liability policies) insure the interests of the Lessor and the Trustee regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies. Any net insurance proceeds as the result of insurance carried by the Lessee or any condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §7. If the Lessor shall receive any such insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this §7 without deduction for such insurance proceeds or condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which proceeds were paid has been fully repaired.

The Lessee hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the Settlement) to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for and for the benefit of the Lessor, and, to the extent such Settlement does not exceed the payments due to the Lessor in respect of a Casualty Occurrence of such Unit or Units for which the Settlement is made, to pay such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent received, towards the satisfaction of Lessee's obligation to make payment to the Lessor in respect of a Casualty Occurrence of the Unit or Units for which Settlement is made, and the Lessor shall be entitled to any excess of such Settlement over such obligation.

§8. *Reports.* On or before March 31 (and in the case of the matters specified in clause (c), September 30) in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Trustee, and at the request of the Lessor to the Manufacturer, an accurate statement (a) setting forth as of the preceding December 31 the quantity, description and Road Numbers of all Units then leased hereunder and/or covered by the Equipment Note Agreement, the quantity, description and Road Numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than minor repairs) or are then withdrawn from use pending such repairs (other than minor repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5 hereof have been preserved or replaced and (c) the nature and status of any monetary obligations delinquent as at the preceding June 30 or December 31, as the case may be; provided, however, that as to the Railroad and Joseph L. Castle and Andrew L. Lewis, Jr. and their successors in trust the foregoing clause (c) shall be limited to monetary obligations delinquent under this Lease. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

On or before each Closing Date under the Loan and Financing Agreement, and thereafter on the last day of each calendar year commencing with the calendar year 1977, the Lessee will cause each of its insurance brokers, which shall be acceptable to the Lessor, to furnish to the Lessor a detailed report, dated as of the Closing Date or as of the last day of such calendar year, as the case may be, signed by such broker showing the insurance then carried and maintained on the Units, stating that all premiums then due have been paid and the opinion of such broker that the insurance then carried and maintained on or with respect to the Units is adequate for the protection of the interests of the Lessor, the Lessee and the Trustee under the Equipment Note Agreement in accordance with the terms hereof.

The Lessee will also furnish to the Lessor promptly upon the entry thereof a copy of each order of the United States District Court for the Eastern District of Pennsylvania, and of each other court having jurisdiction in the premises, directly or indirectly affecting the ability of the Lessee to perform its obligations hereunder or otherwise to carry on its business substantially in the form in which presently conducted.

The Lessee will also furnish to the Lessor, within 120 days after the end of each fiscal year, three copies of its balance sheet and related statements of income and surplus certified by independent public accountants selected by the Lessee and reasonably acceptable to the Lessor, showing the financial condition of the Lessee at the end of and the results of its operations for such fiscal year and, upon the request of the Lessor, such other information or statements (including, without limitation, interim financial reports certified by the chief financial officer of the Lessee) related to the transactions contemplated hereby as may be helpful to the Lessor in evaluating the financial position of the Lessee.

The Lessee will also furnish copies of the reports, orders, and financial statements and other information and statements referred to in the preceding paragraphs of this §8 to all such holders of Equipment Notes as the Lessor may from time to time designate in writing to the Lessee.

**§9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.*** THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE

QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE, OR (EXCEPT AS SET FORTH IN §23(a) HEREOF) AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, OR COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Manufacturer under the provisions of paragraph 1 of the Manufacturing Agreement; *provided, however*, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Inspection and Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the Trustee and the holders of the Equipment Notes, to comply in all respects (includ-

ing, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation, use or storage of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; *provided, however*, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor, the Trustee or the holders of the Equipment Notes under this Lease or under the Equipment Note Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition.

Any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Equipment Note Agreement) shall immediately be vested in the Lessor. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Trustee, the Agent under the Loan and Financing Agreement and the holders of the Equipment Notes (Indemnitees) from and against all losses, damages, injuries, liabilities, claims and demands whatso-

ever (Claims), regardless of the cause thereof, and expenses, including, but not limited to, counsel fees and expenses, the reasonable compensation and expenses of the Trustee and said Agent, printing expenses, investment banker's fees and commissions, expenses of maintaining the Note Register pursuant to §2.5 of the Equipment Note Agreement, recordation expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of, or the occurrence of a default or an Event of Default under, the Equipment Note Agreement, the Equipment Notes, the Loan and Financing Agreement, or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in §14 of this Lease and except that the Lessee shall not be required to indemnify any Indemnitee for any Claim resulting solely from such Indemnitee's wilful misconduct or gross negligence. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease except to the extent that the Lessee may be discharged from its obligations by assignment or termination of this Lease pursuant to §22 hereof. The obligations under this §9 shall be in addition to all other monetary obligations of the Lessee under this Lease, shall be part of the rentals payable hereunder and shall be payable within 30 days of service upon the Lessee of a written demand therefor; provided, however, that any such obligations which shall have accrued on or before any Closing Date under the Loan and Financing Agreement shall be payable on such Closing Date.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

§10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§3, 7, 13 or 24 hereof, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment, sublease or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein or in the Consent by the Lessee, and such default shall continue for 30 days after written notice from the Lessor or the Trustee to the Lessee specifying the default and demanding that the same be remedied;

D. if the obligations of the Railroad Trustees hereunder are assumed by a Directed or Acceptable Successor as defined in §22 hereof, or by the Railroad's successor pursuant to a plan of reorganization for the Railroad approved in the Reorganization Proceedings (both being hereinafter called the Successor) and either

(i) a petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Successor (or, if the Successor is not a railroad corporation, as said term is defined in subsection (m) of said §77, a petition is filed by or against the Successor under any other provision of said Act or other bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions) and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the assumed obligations of the Successor under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(ii) any proceedings shall be commenced by or against the Successor for any relief which includes, or might result in, modification of the assumed obligations of the Successor under this Lease under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such peti-



tion shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Successor under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Successor or for the property of the Successor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a decree or order is entered in the Reorganization Proceedings, or in any other proceeding before any other court of competent jurisdiction, directly or indirectly preventing or disabling the Railroad Trustees or the Successor from performing any of their or its obligations under this Lease, except any order of the Special Court under the Regional Rail Reorganization Act of 1973 directing or effecting the transfer of the Units or other property of the Lessee; or

F. any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made,

then in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; provided all such actions shall be limited in the event of assignment or termination of this Lease under §22 hereof as therein provided; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessee shall deliver possession of the Units to the Lessor in accordance with §11 hereof, and the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and

enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum (which, together with the amount referred to in the following clause (iii), shall in no event be less than the Casualty Value at the beginning of the month in which shall occur such termination with respect to all Units subject to this Lease), with respect to each unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of all amounts payable by the Lessee to the Lessor hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in §17(a) hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §17(d) or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this

Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in §17(a) hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §17(d) or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; provided all such action shall be limited in the event of assignment or termination of this Lease under §22 hereof as therein provided.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§11. *Return of Units Upon Default.* If the Lessor shall exercise its option to terminate this Lease pursuant to §10(b) hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and shall meet the standards then in effect under the inter-

change rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization having jurisdiction in the premises. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Trustee's remedies under the Equipment Note Agreement, the Lessee shall pay to the Trustee the per diem amounts with respect to interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§6, 7, 9, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign, sublease or transfer its leasehold interest under this Lease in the Units or any of them except as provided in §22 hereof. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, the Trustee or the holders of the Equipment Notes or resulting from claims against the Lessor, the Trustee or the holders of the Equipment Notes not related to the ownership or leasing of the Units or the Trustee's or such holder's security interest therein) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Lessee, the Trustee or the holders of the Equipment Notes therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this paragraph, the immediately succeeding paragraph and §22. The accrual of any of the Lessee's rights in the leasehold interest under this Lease to Manufacturers Hanover Trust Company as successor to the Central Union Trust Company as Mortgagee under a Mortgage and Deed of Trust dated January 2, 1924 between the Railroad and the said Mortgagee, as amended and supplemented, shall not constitute a violation of the provisions of this paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of

the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic agreements, but only upon and subject to all the terms and conditions of this Lease; *provided, however*, that the Lessee shall not use or permit the use of any Units in service involving the operation and/or maintenance thereof outside the United States of America or Canada, *provided* that no Unit shall be in Canada for more than 120 days during any twelve month period. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. The Lessee represents and warrants to the Lessor and the Trustee that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

So long as the obligations of the Lessee hereunder shall not have been terminated as provided in §22 hereof, the Reorganization Proceedings shall not be dismissed or terminated nor shall the property of the Railroad be surrendered by the Railroad Trustees or their successor or successors, unless, as a condition of such dismissal or termination or such surrender, this Lease and all the obligations then existing or to accrue of the Railroad Trustees under this Lease shall be assumed as a general obligation by the Railroad's successor pursuant to a plan of reorganization approved in the Reorganization Proceedings or by any other railroad corporation (other than a corporation acquiring any of the Railroad Trustee's rail properties under the Regional Rail Reorganization

Act of 1973) acquiring the greater portion of the Railroad's "rail properties" (as defined in the Regional Rail Reorganization Act of 1973) or as an obligation, having the same status and priorities as those of the Railroad Trustees under this Lease, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Railroad Trustees.

In case of any sale or conveyance of all or substantially all the lines of railroad of the Railroad other than a sale or conveyance under the terms of the Regional Rail Reorganization Act of 1973 the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Lease or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all the obligations of the Railroad Trustees hereunder.

Except as otherwise provided in §22 hereof, whenever used in this Lease, the term "Railroad Trustees" shall be deemed to mean any corporation (including the Railroad), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all the obligations and covenants of the Railroad Trustees hereunder. The provisions of this §12 shall not be construed to limit or prevent any lawful action required to be taken by the Railroad Trustees under the provisions of the Regional Rail Reorganization Act of 1973.

§13. *Renewal Option; Purchase Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months nor more than nine months prior to the end of the original term of this Lease or any extended term hereof with respect to a Unit, elect

(i) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease for one additional five year period commencing on the scheduled expiration of the original term of this Lease,

(ii) to extend the first extended term of this Lease in respect of all but not fewer than all of such Units then covered by this Lease for one additional five year period, commencing on the scheduled expiration of such extended term, provided that no such extended term

shall extend beyond ten years from the date of expiration of the original term of this Lease, in each case at a rental equal to the "Fair Rental Value" of such Units payable in advance in sixty monthly payments for such five year period, such monthly payments to be made in each year of the extended term on the last day of such month, commencing with the last day of the month next preceding the first month of said extended term; or,

(iii) to purchase all, but not fewer than all, the Units covered by this Lease at the end of the original term of this Lease or any extended term hereof with respect to a Unit for a purchase price equal to the "Fair Market Value" of such Units as of the end of such original or extended term.

Fair Rental Value during any extended term of this Lease shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment or scrap dealer) and an informed and willing seller under no compulsion to sell and, in such determination, cost of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease or any extended term hereof with respect to a Unit, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or Fair Market Value of the relevant Units, such value shall be determined in accordance with the applicable foregoing definition by a qualified independent Appraiser, which value shall be binding hereunder. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make the applicable such determination within a period of 30 days



following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

§14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit (unless the Unit is sold to the Lessee or the Lessee renews this Lease), the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 270 days and transport the same at any time within such 270 day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this §14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the termination of this Lease is a direct result of a conveyance of the Railroad's property and this Lease is not assumed in full by a Successor defined in §22, or is terminated as pro-

vided in §22(b) hereof, the assembling, storing and transporting as provided herein will be performed by the Lessee to the best of its ability; provided that, in any event, the assembling, storing and transporting of the Units as aforesaid shall be at the expense of the Lessee. If this Lease has been assumed by such a Successor under §22, then the Lessee shall be relieved of the obligation to assemble and store the Units on the Railroad's tracks and to transport them over its lines.

§15. *Opinion of Counsel.* On each Closing Date under the Loan and Financing Agreement the Lessee will deliver to each Lender, the Trustee and the Lessor, an opinion satisfactory to the Trustee and the Lessor, and to the Lenders and their special counsel, dated such Closing Date, of Obermayer, Rebmann, Maxwell & Hippel, counsel to the Lessee, to the effect that

(i) this Lease and the Consent have been duly executed and delivered by the Lessee, and are legal, valid, binding and enforceable against the Lessee in accordance with their terms;

(ii) the Equipment Note Agreement and this Lease have been duly filed and recorded with the Interstate Commerce Commission under Section 20c of the Interstate Commerce Act, and no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Trustee in and to the Units, to make effective therein the security in the Units and this Lease contemplated by the Equipment Note Agreement and for the full protection therein, with respect to the Units and this Lease, of the holders of the Equipment Notes issued pursuant to the Equipment Note Agreement;

(iii) the execution and delivery by the Railroad Trustees of this Lease and the Consent have been duly authorized by an order dated October 24, 1975 of the United States District Court for the Eastern District of Pennsylvania in the Reorganization Proceedings. Said order expressly provides that, upon entering into this Lease, the Railroad Trustees are authorized to comply with all of the provisions hereof without further order of or action by the Court, and that, without limiting the generality of the foregoing, the Railroad Trustees are authorized to deliver possession of the Units to the Lessor or to the Trustee, as assignee of the Lessor's rights under this Lease, upon any termination of this Lease by reason of default hereunder, without delay and without further order of or action by the Court; and no other governmental authorizations are required for the execution and delivery of the Consent and this Lease by the Lessee, the

leasing of the Units hereunder and the validity and enforceability of the Consent and this Lease as against the Lessee; or if any such authorization is necessary it has been obtained, specifying the same;

(iv) Joseph L. Castle and Andrew L. Lewis, Jr., have been duly appointed as Trustees of the property of the Railroad by an order of the United States District Court for the Eastern District of Pennsylvania; the appointment of said persons as said Trustees has been duly ratified by order of the Interstate Commerce Commission; and the Lessee is duly vested with title to the properties of the Railroad and has the power and authority to carry on its business;

(v) the order of the United States District Court for the Eastern District of Pennsylvania referred to in the foregoing clause (iii) is in full force and effect and has not been reversed, modified or amended, and the time for taking an appeal which might result in any reversal, modification or amendment of said order has elapsed, and no motion, appeal or other proceeding has been made, taken or commenced challenging the validity or effect of the order;

(vi) the rights of the Lessor as set forth in this Lease and the title of the Lessor to the Units are free and clear of the lien of any mortgage, security agreement or other instrument binding upon the Railroad or the Lessee;

(vii) the Lessee's obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, payable on a parity with other equipment obligations theretofore or thereafter assumed or incurred by the Lessee, except the obligation of the Railroad Trustees under an agreement dated as of October 1, 1973 with the United States of America with respect to 57 diesel locomotives, and, upon occurrence of an Event of Default under this Lease, any claim for damages hereunder will constitute an expense of administration of the Lessee;

(viii) except as disclosed in the letter of said counsel to the Trustee, each Lender and the Lessor, dated September 29, 1975, no litigation or administrative proceedings are pending or, to the knowledge of such counsel, are threatened against the Lessee, the adverse determination of which would affect the validity of this Lease or the rights of the Lessor to enforce the provisions hereof; and

as to such other matters as the Trustee, or the Lenders or their special counsel, or the Lessor, may reasonably request.

§16. *Recording.* The Lessee, at its own expense, will cause (i) this Lease, the Consent, the Manufacturing Agreement and the Equipment Note Agreement and any assignment hereof or thereof to be filed and

recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and (ii) Uniform Commercial Code financing statements covering the security interests created by the Equipment Note Agreement in and to the Manufacturing Agreement to be duly filed in all places in the State of Arizona as, in the opinion of the counsel for the Company referred to in Section 4.3 of the Loan and Financing Agreement, are necessary or desirable to perfect said security interests. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Equipment Note Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) in all public offices (including, without limitation, public offices in Canada) any and all further instruments required by law or reasonably requested by the Lessor, the Trustee or the holders of the Equipment Notes for the purpose of proper protection, to their satisfaction, of the Lessor's, the Trustee's and such holders' respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Note Agreement; and the Lessee will promptly furnish to the Trustee evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee and the Lessor. This Lease, the Consent, the Manufacturing Agreement and the Equipment Note Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§17. *Federal Income Taxes.* (a) *Indemnity for Loss of Investment Tax Credit, Depreciation or Interest Deduction.* Subject to the provisions of §22, including the proration provisions thereof, if (i) the Lessor (A) shall not be entitled to full use of the investment tax credit (hereinafter called the Investment Credit) allowed by Section 38 of the Internal Revenue Code of 1954 in effect on the date hereof (hereinafter called the Code) for "new section 38 property" at the rate of 10% with respect to the full Purchase Price of the Units, (B) shall have its tax increased on account of the recomputation of such Investment Credit pursuant to Section 47 of the Code, (C) shall not be entitled for each of its taxable years (or portions thereof) during which this Lease is in effect to a depreciation deduction (as a result of not being

allowed to the Lessor in the amounts and at the times a depreciation deduction would otherwise have been allowed) with respect to the full Purchase Price of the Units computed on the basis of a method of depreciation provided by Section 167(b) (2) or (3) of the Code, the asset depreciation range system of Treas. Regs. §1.167(a)-11, an asset depreciation period of not more than twelve years and to a salvage value of 5% of the full Purchase Price of the Units, after application of a reduction pursuant to Section 167(f) of the Code (hereinafter called the ADR Deduction), or (D) shall not be entitled to a deduction in each taxable year of the Lessor for all interest paid or accrued during such year on the Equipment Notes (hereinafter called the Interest Deduction); and (ii) such loss of Investment Credit, ADR Deduction or Interest Deduction or increase in tax pursuant to Section 47 of the Code is not solely attributable to an act of the Lessor described in §17(b) hereof, then the Lessee shall pay to the Lessor, as supplemental rent, a sum (computed separately for each calendar year, or portion thereof) which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, or under the laws of any taxing authority or governmental subdivision of a foreign country, shall be equal to the sum (net of any income tax savings realized by the Lessor solely by reason of foreign income taxes being imposed on the Lessor with respect to the receipt of such sum) of (w) the amount of the Investment Credit lost by the Lessor (as a result of not being allowed to the Lessor in the amounts and at the times the Investment Credit would otherwise have been allowed) and/or (x) the increase in the Lessor's tax on account of any recomputation of Investment Credit, pursuant to Section 47 of the Code, and (y) an amount sufficient to give the Lessor the same after-tax cash flow for such taxable year (or portion thereof) as is contemplated by this Lease and would have resulted had such ADR Deduction been allowed to the Lessor in the amounts and at the times the ADR Deduction would otherwise have been allowed on the aforesaid basis, and (z) an amount sufficient to give the Lessor the same after-tax cash flow for such taxable year (or portion thereof) as is contemplated by this Lease and would have resulted had such Interest Deduction been allowed to the Lessor in the amounts and at the times Interest Deduction would otherwise have been allowed on the aforesaid basis, together with any interest, addition to

tax or penalty which may be assessed by the United States Government against the Lessor in connection with such loss or recomputation of Investment Credit, or loss of ADR Deduction or Interest Deduction on the aforesaid basis, which amounts shall be payable, together with interest thereon from the date of payment by the Lessor to the date the Lessee shall reimburse the Lessor in accordance with the provisions of this §17(a) at a rate of the lesser of (a) the maximum lawful rate or (b) the prime rate from time to time charged by First National City Bank, New York, New York, plus five percent (5%) on written demand made at any time after payment of the consequential additional income tax.

In the event that the Lessee shall have made a payment to the Lessor required by the terms of this §17(a) for the loss or disallowance of any portion of the Investment Credit with respect to any portion or all the Units, the Casualty Values for such Units shall be reduced by the amount, if any, included therein which represents reimbursement to the Lessor for the portion of such investment tax credit so lost or disallowed; *provided, however*, that the Casualty Values as so reduced shall not be less than the aggregate of the unpaid principal of and interest on the Equipment Notes outstanding as of the dates as of which such Casualty Values would be payable. The Lessor agrees to notify the Lessee promptly of any claim, of which the Lessor has knowledge, made by the Internal Revenue Service against the Lessor with respect to the disallowance of such Investment Credit, ADR Deduction or Interest Deduction.

(b) *Acts of Lessor.* Lessee shall not be required to pay the Lessor the amounts provided for in §17(a) hereof with respect to a Unit if the loss or disallowance of Investment Credit, ADR Deduction or Interest Deduction, as the case may be, or the right to claim the same, is solely attributable to the occurrence of any of the following events:

(i) the Lessor shall fail to claim such Investment Credit, ADR Deduction or Interest Deduction in its income tax returns for the appropriate years or shall fail to follow procedures in claiming such Investment Credit, ADR Deduction or Interest Deduction and such failure to claim or to follow such procedures, as the case may be, shall preclude the Lessor from claiming such Investment Credit, ADR Deduction or Interest Deduction, provided that the foregoing does not

apply to any Investment Credit, ADR Deduction or Interest Deduction not claimed because of a good faith determination made by the Lessor based on the advice of its tax counsel (who shall not be an employee of the Lessor) (hereinafter referred to as Lessor's Tax Counsel) that it is not properly allowable; and in the case of any such determination, the Lessor agrees to notify the Lessee in writing of such determination at least 30 days prior to the date on which it must make such claim and if the Lessee shall, within 5 days thereafter, object to such determination, the decision as to claiming such benefits shall be made by such independent tax counsel as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent tax counsel, one of whom shall be selected by the Lessor, the second by the Lessee, and the third by the first two so selected. The expenses and fees of the independent tax counsel shall be borne by the Lessee.

(ii) the Lessor (or, if the Lessor files its Federal income tax returns as a member of an affiliated group, the group) shall not have sufficient income to benefit from such Investment Credit, ADR Deduction or Interest Deduction;

(iii) the Lessor shall voluntarily transfer legal title to such Unit to anyone (other than a transfer pursuant to §7 hereof) or shall dispose of or reduce its interest in such Unit and such transfer, disposition or reduction in interest (A) shall be the direct cause of such loss, (B) shall occur at any time when no Event of Default has occurred and is continuing and (C) shall not be pursuant to the written consent of the Lessee;

(iv) the Lessee shall have paid the Lessor the Casualty Value of such Unit pursuant to §7 hereof or the Manufacturer shall have paid the Lessor a comparable value pursuant to paragraph 7 of the Manufacturing Agreement; or

(v) the Lessor shall have elected in writing for purposes of the Investment Credit to treat the Lessee as the purchaser of such Unit.

(c) *Contest of Disallowance of Tax Benefits.* The Lessor agrees that if, in the opinion of the Lessor's Tax Counsel, a bona fide claim to all or a portion of the Investment Credit, the ADR Deduction or Interest Deduction (with respect to part or all the Units) exists in respect of which the Lessee is required to pay supplemental rent and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by the Lessor's Tax

Counsel in order to sustain such claim. The Lessor may, at its option, take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of tax and interest paid attributable to the Investment Credit, ADR Deduction or Interest Deduction disallowed, required to be recaptured or lost, which interest shall be computed at the rate of the lesser of (i) the maximum lawful rate or (ii) the prime rate from time to time charged by First National City Bank, New York, New York, plus five percent (5%), from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor for such tax and interest in accordance with the provisions of this §17(c). In the event the foregoing conditions of this §17(c) have been satisfied, the Lessor shall nevertheless not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor hereby agrees to notify the Lessee promptly of any proposed disallowance and, provided that the Lessee has so indemnified and secured the Lessor, agrees that no settlement or compromise of any such claim at any stage prior to final judicial determination of the matter shall be made without the Lessee's consent, which consent shall not be unreasonably withheld.

Subject to the provisions of §22 hereof, in the event that this Lease is terminated with respect to any part or all the Units prior to the time the Lessee is obligated to pay supplemental rent with respect thereto pursuant to the preceding paragraphs of this §17, then instead of paying such supplemental rent, the Lessee shall pay to the Lessor, on the date such supplemental rent would first have been payable if the Lease were in effect as to such Units, an amount which in the reasonable opinion of the Lessor will cause the Lessor's discounted after-tax rate of return with respect to such Units to be equal to the Lessor's discounted after-tax rate of return with respect to such Units that would have been available if the Lessor had been entitled to the utilization of all or such portion of the Investment Credit, ADR Deduction or Interest Deduction which was not claimed or was disallowed or required to be recaptured, and on such date the Lessee shall also pay to the Lessor



the amount of any interest, addition to tax or penalty paid to the United States by the Lessor attributable to the disallowance, recapture or loss of all or any portion of such credit or deduction.

(d) *Acts of Lessee.* The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units. The Lessee represents, covenants and warrants that at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property", including use of the Units predominantly outside the United States, within the meaning of Section 48(a) of the Code.

(e) *References to Internal Revenue Code.* Reference in this Lease to specific sections of the Code shall be deemed to include comparable sections or provisions of any successor laws.

(f) *Continuance of Indemnities.* The indemnities contained in this §17 shall survive the expiration or termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, the Lessor, the Trustee, each holder of an Equipment Note and their respective successors and assigns; *provided, however*, that the Lessee shall not be liable for payment of indemnities to the extent provided in §22 hereof.

§18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obli-

gations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at a rate which shall be the prime rate from time to time charged by First National City Bank, New York, New York, plus five percent (5%), on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§19. *Notices.* Any notice required or permitted to be given by either party hereto shall be given by telex or telecopier, in either case confirmed by mail, or by hand delivery or registered mail and shall be deemed to have been given to either party hereto when received by such party at its address set forth below:

(a) if to the Lessor, to Greyhound Tower, Phoenix, Arizona 85077, attention of Vice President—Administration, and

(b) if to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and consented to by the Trustee.

§21. *Other Obligations.* Lessee agrees that, during the term of this Lease, Lessee will not assume or enter into any other leases of equip-

ment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Lease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Railroad or the Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this Lease are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Railroad Trustees to issue and sell trustees' certificates for any proper purpose.

§22. *Lessee's Right to Assign or Terminate.*

(a) In the event that the greater portion of the Railroad's "rail properties" (as defined in the Regional Rail Reorganization Act of 1973) are transferred to Consolidated Rail Corporation or to any other corporation, person, firm or entity (said Corporation or any such corporation, person, firm or entity being hereinafter called a "*Directed Successor*") under, pursuant to, or through, the Regional Rail Reorganization Act of 1973, as the same now is or as it may be amended or under, pursuant to, or through, any successor legislation designed to accomplish the same or similar purposes as said Regional Rail Reorganization Act of 1973, the Lessee shall have the right to assign this Lease to such Directed Successor and, with the consent of the Lessor, which consent shall be in the sole discretion of the Lessor, to any other person, firm, corporation or entity of reliable standing with the financial community (hereinafter "*Acceptable Successor*"), upon the following terms and conditions: (i) such Directed or Acceptable Successor shall assume, without limitation, all the rights (except those granted under this §22) and obligations of the Lessee under this Lease from the effective date of such assignment, including all obligations arising after such date but caused by occurrences prior thereto, and the Railroad Trustees shall be discharged from all obligations under this Lease as of that date, subject to the provisions of the following clause (ii) and such Directed or Acceptable Successor shall execute a new Consent and Agreement substantially in the form of the Consent and such Directed or Acceptable Successor shall assume all obligations of the Railroad Trustees under that certain agreement dated as of September 2, 1975 between the parties to the Loan and Financing Agreement, the Trustee, Greyhound Leasing & Financial Corporation, the Railroad Trustees and the Manufacturer

relating to the Equipment Notes, Second Series, therein referred to; and (ii) the Lessor shall be entitled to recover from the Lessee and/or the Railroad Trustees and/or the Directed or Acceptable Successor (who if such claim is made against it by the Lessor shall have a claim against the Lessee and/or the Railroad Trustees) (A) for indemnity for any loss for which indemnity is provided herein (including, but not limited to, any indemnity for loss of tax benefits, other than any such loss arising from the act of the execution of this Lease or compliance with the terms hereof) which is occasioned by any action or failure to act of the Lessee and/or the Railroad Trustees and (B) for that proportion of any other indemnity, the occasion for which arose prior to the assignment or termination under this §22, including the loss of Investment Credit, which the period of time prior to such assignment bears to the original term of this Lease; and (iii) such Directed or Acceptable Successor shall pay to the Railroad Trustees any prorated portion of advance rental paid by the Railroad Trustees to the Lessor under §3 of this Lease; and (iv) such Directed or Acceptable Successor shall (a) make such representations and warranties, of the character set forth in §23(b) hereof as may be reasonably requested by the Trustee or the Lessor, (b) at its expense, furnish to the Trustee and the Lessor such an opinion of counsel, of the character set forth in §15 hereof, as may reasonably be requested by the Trustee or the Lessor, and (c) at its expense, furnish to the Trustee and the Lessor an opinion of Canadian counsel (which counsel shall be satisfactory to the Trustee and the Lessor), dated the effective date of its assumption of the rights and obligations of the Lessee under this Lease, to the effect that (A) this Lease has been filed, deposited or recorded in such public offices (if any), and such arrangements for publication of notice thereof (if any) have been made, as are sufficient for the full protection in Canada of the rights of the Lessor hereunder, and (B) the Equipment Note Agreement has been filed, deposited or recorded in such public offices (if any), and arrangements for publication of notice thereof (if any) have been made, as are sufficient for the full protection of the right, title and interest of the Trustee in and to any Units from time to time situated in any Province of Canada into which it is contemplated that such Units will be introduced, to make effective therein the security contemplated by the Equipment Note Agreement, and for the full protection therein of the holders of the Equipment Notes issued thereunder.

(b) In the event that the greater portion of the Railroad's lines of railroad are transferred to a Directed Successor as aforesaid but the Lessee is unable to effect an assignment to such Directed or an Acceptable Successor in accordance with the terms stated in the fore-

going §22(a), then the Lessee may terminate this Lease upon 205 days notice to the Lessor and the Trustee which notice may be given at any time after such transfer that the Lessee believes such assignment to be impractical in which case all the Lessee's rights and obligations, and those of the Railroad Trustees, hereunder, without limitation except as specifically provided in said §22(a), shall cease and determine as of the date 205 days after receipt by the addressees thereof of notice of termination and the Lessee will deliver the Units at its cost and expense to the Lessor or any person, firm, corporation or entity that the Lessor directs in accordance with the provisions of §14 hereof.

(c) The provisions contained in this §22 are exclusively for the benefit of the Lessor, the Lessee, the Railroad Trustees including for this purpose their successors in such trust but not including other successors or assigns, and the Trustee and are not to be construed as giving any right to further assign or terminate, either to any Directed or Acceptable Successor or to any other person, firm, corporation or entity.

(d) In no event shall there be more than a single Directed or Acceptable Successor, or shall any such Successor have assigned to it, or assume, less than all of the Lessee's rights and obligations hereunder (except those under this §22, as provided in the foregoing §22(c)). A Directed Successor may, however, sublease all or a portion of the Units to another corporation, person, firm or entity acquiring any portion of the Railroad's "rail properties" (as defined in the Regional Rail Reorganization Act of 1973) pursuant to said Act.

### §23. *Representations and Warranties.*

(a) The Lessor represents and warrants that at the time the Units become subject to this Lease, the Lessor will be the true and lawful owner thereof and that each such Unit will be free and clear of all claims, liens, security interests and other encumbrances in favor of any person claiming by, through or under the Lessor except only the rights of the Lessee hereunder and of the Trustee under the Equipment Note Agreement.

(b) The Lessee represents and warrants to the Lessor and the Trustee, for the benefit of the holders of the Equipment Notes, that:

(i) Joseph L. Castle and Andrew L. Lewis, Jr., have been duly appointed as Railroad Trustees by an order of the United States District Court for the Eastern District of Pennsylvania; the appointment of said Railroad Trustees has been duly ratified by an order of the Interstate Commerce Commission; and said

Railroad Trustees are duly vested with the title to the properties of the Railroad and have the power and authority to carry on its business.

(ii) The execution and delivery of this Lease and the Consent and Agreement appended hereto by the Lessee and their assumption and undertaking of the obligations, duties and liabilities hereof and thereof have been duly authorized by an order of said Court; and this Lease and said Consent and Agreement are legal, valid, binding and enforceable against the Lessee in accordance with their terms.

(iii) The rights of the Lessor as herein set forth and the title of the Lessor to the Units are free and clear of the lien, charge or security interest created by any mortgage, security agreement or other instrument binding upon Railroad or the Lessee.

(iv) Except for the authorization by the United States District Court for the Eastern District of Pennsylvania of the execution and delivery of this Lease by the Lessee, no governmental authorizations, approvals or exemptions are required for the execution and delivery of this Lease or for the validity and enforceability hereof or for the leasing of the Units hereunder, for the rentals and on the other terms and conditions herein provided; or, if any such authorizations are required, they have been obtained and, if any such authorizations shall hereafter be required, they will be promptly obtained.

(v) Except as set forth in the letter referred to in §15(viii), no litigation or administrative proceedings are pending or, to the knowledge of the Lessee, are threatened against the Lessee, the adverse determination of which would affect the validity of this Lease or the rights of the Lessor to enforce the provisions hereof.

(vi) Obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, payable (except as stated in the last paragraph of §3) on a parity with other equipment obligations heretofore or hereafter assumed or incurred by the Lessee; and, upon occurrence of an Event of Default under this Lease, any claim for damages will constitute an expense of administration.

(vii) The Railroad does not and will not do any business in Canada, although individual units of rolling stock owned or leased by it may from time to time be used therein on an occasional basis pursuant to the usual interchange of traffic agreements with other carriers.

(viii) The entering into this Lease or performance by the Lessee of the transactions contemplated hereby is not pursuant to or in furtherance of any plan, arrangement or understanding arising out of, made in connection with or in any manner related to, any prior, existing or presently contemplated investment in, or transaction or relationship with, any Lender with respect to any employee benefit plan or related trust (within the meaning of the Employee Retirement Income Security Act of 1974 or the Code) of the Lessee, the Railroad or any of their affiliates.

§24. *Commitment Fee.* (a) The Lessee covenants and agrees for the benefit of the holders of the Equipment Notes that it will from time to time pay to the Lessor all amounts necessary to permit the Lessor to make each of the payments referred to in Section 4.3 of the Loan and Financing Agreement, the obligation under this §24(a) to be in addition to all other monetary obligations of the Lessee under this Lease and shall be part of the rentals payable hereunder.

(b) The Lessee agrees to pay to the Lessor a commitment fee (computed at the rate of  $\frac{1}{2}$  of 1% per annum on the basis of a 360-day year of twelve 30-day months) on the unused portion of the Lessor's Commitment (as hereinafter defined) from May 12, 1975 to and including the earlier of the final Closing Date under the Loan and Financing Agreement or June 30, 1976, payable on each such Closing Date in the amount of the Lessor's Commitment unused immediately prior to said date, and on June 30, 1976 with respect to any portion of the Lessor's Commitment remaining unused on said date. The obligation under this §24(b) is in addition to all other monetary obligations of the Lessee under this Lease. Lessor's Commitment is in the amount of \$8,500,000.00. The amount of such Commitment that is unused as of any date shall equal such Commitment less the difference between (i) the Purchase Price of the Units delivered under the Lease as of such date, and (ii) the aggregate amount loaned to the Lessor under the Loan and Financing Agreement as of such date.

§25. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument.

§26. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New

York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§27. *Condition.* The obligation of the Lessor to lease any Unit hereunder shall be conditioned upon funds for '80%' of the Purchase Price for such Unit being loaned to the Lessor pursuant to the Loan and Financing Agreement. In the event such funds are not so loaned, the Lessee shall have no obligation to lease future Units.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

GREYHOUND EQUIPMENT LEASING  
CORPORATION,

By *Robert H. Damm*  
Vice President

[CORPORATE SEAL]

Attest:

*Gerald Phillips*  
Assistant Secretary

JOSEPH L. CASTLE, [SEAL]

*Joseph L. Castle*

Witness:

*C L Benner*

ANDREW L. LEWIS, JR., [SEAL]

*Andrew L. Lewis, Jr.*

Witness:

*C L Benner*

*As Trustees of the Property of  
Reading Company and not individ-  
ually*



STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this 24<sup>th</sup> day of November, 1975, before me personally appeared **ROBERT H. DAMM**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREYHOUND EQUIPMENT LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on this day on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission expires

Frederick J. Pomerantz  
 Notary Public  
 FREDERICK J. POMERANTZ  
 NOTARY PUBLIC, State of New York  
 No. 31-4605429  
 Qualified in New York County  
 Commission Expires March 30, 1979

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } SS.:

On this 21<sup>st</sup> day of November, 1975, before me personally appeared JOSEPH L. CASTLE and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company, signers and sealers of the foregoing instrument, and they acknowledged the same to be their free act and deed, as such Trustees, before me.

[NOTARIAL SEAL]

My Commission expires

Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires January 4, 1979

Francis V. Flynn  
 Notary Public

SCHEDULE A

DESCRIPTION—SPECIFICATIONS—ROAD NUMBERS

<u>Description</u>	<u>Specification Number and Date</u>	<u>Units</u>	<u>Road Numbers (All Inclusive)</u>
100-Ton Open Top Triple Hopper Cars	3400-431 Dated September 30, 1975	1,100	483501-484600
100-Ton Gondola Cars	3400-432 Dated September 18, 1975	300	38800-39099
	TOTAL .....	1,400	